

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Brian Melendez,

Complainant,

vs.

Ember Reichgott Junge,

Respondent.

NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION

AND

NOTICE OF AND ORDER FOR
PROBABLE CAUSE HEARING

TO: Alan Weinblatt, Weinblatt & Gaylord PLC, 111 E. Kellogg Boulevard, Suite 300, St. Paul, MN 55101; and Ember Reichgott Junge, 416 E. Hennepin Avenue, Suite 218, Minneapolis, MN 55413.

On July 17, 2006, Brian Melendez filed a Complaint with the Office of Administrative Hearings alleging the Respondent knowingly violated Minn. Stat. § 211B.02 by placing the initials “DFL” on her campaign billboards, campaign website, and email correspondence that falsely imply that she was endorsed by the DFL party. After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the complaint sets forth a prima facie violation of § 211B.02.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter is scheduled for a probable cause hearing to be held by telephone before the undersigned Administrative Law Judge at **9:30 a.m. on Thursday, July 20, 2006**. The hearing will be held by call-in telephone conference. You must call: **1-888-390-0676** at that time. Follow the directions and enter the code “**17404**” when asked for the meeting number. The probable cause hearing will be conducted pursuant to Minn. Stat. § 211B.34. Information about the probable cause proceedings and copies of state statutes may be found online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the probable cause hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should provide to the Administrative Law Judge all evidence bearing on the case, with copies to the opposing party, before the telephone conference takes place. Documents may be faxed to Judge Neilson at 612-349-2665.

At the conclusion of the probable cause hearing, the Administrative Law Judge will either: (1) dismiss the complaint based on a determination that the complaint is frivolous, or that there is no probable cause to believe that the violation of law alleged in the complaint has occurred; or (2) determine that there is probable cause to believe that the violation of law alleged in the complaint has occurred and refer the case to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing. Evidentiary hearings are conducted pursuant to Minn. Stat. § 211B.35. If the Administrative Law Judge dismisses the complaint, the complainant has the right to seek reconsideration of the decision on the record by the Chief Administrative Law Judge pursuant to Minn. Stat. § 211B.34, subd. 3.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: July 18, 2006

/s/ Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

MEMORANDUM

The Respondent is a candidate for Minnesota's Fifth Congressional District. She does not have the endorsement of the DFL party. The Complaint alleges that the Respondent has knowingly violated Minn. Stat. § 211B.02 by placing the initials "DFL" on billboards, email correspondence and a campaign website that falsely imply that she has the endorsement of the DFL party and by not ceasing the violation despite notice and demand. The Complainant has attached as exhibits a photograph of one of Respondent's billboards, a printout of Respondent's website pages, and a copy of an email sent from the Respondent. The initials "DFL" appear on each exhibit.

Minn. Stat. § 211B.02 provides in relevant part as follows:

211B.02 False Claim of Support.

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party unit or of an organization.

In *Schmitt v. McLaughlin*,¹ the Minnesota Supreme Court held that a candidate's use of the initials "DFL" falsely implied that the candidate had the endorsement of the DFL party in violation of Minnesota election law. The Administrative Law Judge concludes that the complaint does allege a prima facie violation of Minn. Stat. § 211B.02. This matter will proceed to a probable cause hearing.

B.L.N.

¹ 275 N.W.2d 587, 591 (Minn. 1979) (discussing Minn. Stat. § 210A.02, predecessor to Minn. Stat. § 211B.02). See also, *In the Matter of Doug Ryan*, 303 N.W.2d 462 (1981); *Dougherty v. Hilary*, 344 N.W.2d 826 (1984); *Stone v. Supporters of Carol Kummer for Park Board Commission*, OAH Docket No. 3-6326-16853-CV (Order dated October 13, 2005).